



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peake Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord company attended the call and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the tenancy.

Issue(s) to be Decided

Should the notice to end the tenancy given by the landlord be cancelled?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 1991 and the tenant still resides in the rental unit, which is a 1 bedroom apartment in a complex containing 11 rental units.

The parties had been to a dispute resolution hearing on September 21, 2015 as a result of the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause issued by the landlord. The tenant's application was dismissed and the landlord was successful in obtaining an Order of Possession effective September 30, 2015.

Rent in the amount of \$645.00 per month was payable under the tenancy agreement on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$260.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the Order of Possession was personally served on the tenant and the tenant agreed to vacate the rental unit on September 30,

2015. The landlord returned to the rental unit on either September 30 or October 1, 2015 and the tenant advised that he had a new rental unit lined up and wanted to leave on the following weekend, and the landlord's agent agreed. The landlord's agent returned on the following Monday, October 5, 2015 and the tenant had not vacated. The tenant again requested to stay to the following weekend, and because the landlord had been contacted by another landlord for a reference, the landlord's agent believed the tenant had secured a new place to live and would be moving, and the landlord's agent agreed. However, prior to the weekend, the tenant filed this application for dispute resolution which was received by the landlord on October 13, 2015 and the tenant has not vacated the rental unit.

The landlord's agent further testified that the landlord company collected rent from Social Services on behalf of the tenant for the month of October, 2015 and the landlord's accounting department processed the cheque. The landlord's agent didn't know that when he spoke to the tenant. The landlord's agent contacted Social Services and spoke to someone explaining that the landlord would return the amount either to the tenant or to Social Services immediately, but there has been no follow-up by either Social Services or the landlord. Social Services also provided to the landlord a rent cheque for November, 2015, however that has not been cashed or returned.

The tenant testified that the landlord's agent told him on October 7, 2015 that his rent had not been collected from Social Services. However, the tenant went to Social Services to get a security deposit for his new residence but was told that money was not available to him because October's rent had been cashed. As a result, the landlord for the new rental unit rented it to someone else and the tenant lost the place. Social Services told the tenant to contact the Residential Tenancy Branch and someone at the Residential Tenancy Branch told the tenant he should file a dispute.

The tenant further testified that he and Social Services are looking for another place, but it was not the tenant's fault that he was unable to move out. The tenant is cleaning up the rental unit and is in the process of down-sizing to be able to move into a bachelor suite.

The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and hearing package by registered mail on October 8, 2015 and heard nothing else from the landlord.

Analysis

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. In this case, the parties agree that the landlord has already obtained an Order of Possession based on the notice to end the tenancy given by the landlord, and I cannot change that or cancel the notice.

However, the landlord served the Order of Possession but did not enforce it. Instead, the landlord continued to collect rent. I accept the testimony of the landlord's agent that it was an error by the landlord company's accounting department, however he also testified that there was no follow-up with Social Services. The landlord also has rent for this month and even though the cheque hasn't been cashed, it has not been returned and is still in the possession of the landlord. Where a landlord collects rent, a tenancy has been created. Therefore, although the tenancy ended upon the landlord serving the Order of Possession, I find that the landlord has not reinstated the tenancy, but has created a new tenancy with the tenant.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy given by the landlord is hereby dismissed.

Pursuant to Section 62 of the *Residential Tenancy Act*, I find that a new tenancy has been created by virtue of the fact that the landlord has collected rent after the effective date of the Order of Possession.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 06, 2015

Residential Tenancy Branch

